

RULE 13

ADMINISTRATIVE ADJUDICATIONS:

STAFF DETERMINATIONS AND APPEALS

SECTION 13.01: Scope And Purpose

The purpose of this Rule is to govern practice and procedure before ATRS and the Board of Trustees ("Board") involving any issue or Claim ("Claim(s)") arising as a result of any administrative decision or staff determination of ATRS relating to any retirement plan or program administered by ATRS. ATRS staff is responsible for administering ATRS Members' accounts. Sometimes, the staff will make a determination based on ATRS rules and the rule of law that may be adverse to a Member's Claim. This Rule outlines the procedure for a Member to appeal a decision of ATRS.

This Rule applies to any Claim of a Member. "Member" includes any Member of ATRS; any beneficiary of a Member; any retiree of ATRS; any guardian, administrator, or executor of a Member, retiree, or beneficiary; or any public school (all such categories of persons shall be referred to within this Rule as the "Member"). This Rule does not apply to Claims or causes of action that ATRS or the Board may have against a Member or any other person or entity, regardless of the origin or nature of the Claim.

This Rule should be read in conjunction with the Arkansas Administrative Procedures Act. See Ark. Code Ann §§ 25-15-201 through 219 (the "APA"). To the extent any term or provision of this Rule conflicts with any term or provision of the APA, the terms and provisions of the APA shall supersede this Rule and control.

SECTION 13.02: Informal Resolution Encouraged

Claims by a Member are usually settled by mutual agreement through correspondence or informal conference between the Member and the staff of ATRS. The staff and the Member are strongly encouraged to engage in a good faith attempt to mutually resolve Claims based upon proper application of the laws, statutes, and rules which govern the operation and administration of ATRS plans and programs to the specific facts of the Member's Claim.

SECTION 13.03: Staff Determinations

If the staff makes a determination that is adverse to a Member's Claim, the Member will receive a Staff Determination Letter from ATRS detailing the reason for the decision. The Member may disagree with the staff determination based upon a factual dispute or a dispute regarding the application of the rules and law. All reasonable efforts will be made to resolve the issue with the Member informally. For Claims that are not resolved informally, a Member can appeal the staff determination to the Executive Director. Unless the Member institutes a timely Executive Director Review of the decision stated in the Staff Determination Letter in accordance

with Section 13.04 below, the decision of the Staff will become a final administrative adjudication on the 31st day following the date of issuance of the Staff Determination Letter.

SECTION 13.04: Executive Director Review

Within thirty (30) days of the date of a Staff Determination Letter, the Member may request an Executive Director Review of the staff decision. To commence an Executive Director Review, the Member shall only be required to send a written request to the Executive Director requesting the review. Once the Executive Director receives the Member's written request, the Executive Director will send a letter to the Member acknowledging the Member's request.

The Member shall not be required to re-submit any documents or information with the written request for Executive Director Review. If the Member believes that the Executive Director should review any relevant documents or information not previously submitted to ATRS, the Member may submit such information to the Executive Director. Any additional information must be submitted to the Executive Director within thirty-five (35) calendar days of the date of Executive Director's acknowledgment letter.

The Executive Director will conduct an independent review of the facts and the law, taking into consideration the staff determination as well as any relevant information provided by the Member. After the review period, which may vary in length according to the facts of the Member's Claim, the Executive Director will issue an Executive Director Review Determination Letter to the Member on the Claim.

The Executive Director may affirm, reverse, or modify the staff determination. The Executive Director shall provide to the Member the applicable statutes and rules used in reaching the decision and a summary of the factual basis and legal conclusions for the Executive Director's decision. Unless the Member institutes a timely Appeal of the Executive Director's decision in accordance with Section 13.05 below, the decision of the Executive Director will become a final administrative adjudication on the 31st day following the date of issuance of the Executive Director Review Determination Letter.

SECTION 13.05: Appeals to the Board

Any decision of the Executive Director regarding a staff determination may be appealed to the Board. In order to commence an Appeal, the Member must submit a written Notice of Appeal to the Board within thirty (30) days of the date of issuance of the Executive Director Review Determination Letter. The Notice of Appeal may be in the form of a letter addressed to:

ATRS Board of Trustees
Member Appeals
ATTN: Legal Department
1400 West Third Street
Little Rock, Arkansas 72201

All appeals from an Executive Director decision to the Board will be assigned to a Hearing Officer, who will conduct an administrative hearing, make a factual and legal determination of the Claim, and prepare a proposed order to the Board that includes Findings of Fact and Conclusions of Law. The Executive Director or his designee shall appoint the Hearing Officer from a list of qualified individuals approved by the Executive Director.

Following appointment, the Hearing Officer shall issue a written Scheduling Order to the Member, the Executive Director of ATRS, and the legal counsel of ATRS. The Scheduling Order shall contain all information required under the Arkansas Administrative Procedures Act. See Ark Code Ann. § 25-15-208. The Hearing Officer, at his or her discretion, may include in the Scheduling Order reasonable deadlines for the submission and exchange of exhibits, witness lists, and related materials prior to the hearing, including but not limited to, any requested proposed findings of fact and conclusions of law. Unless otherwise ordered, hearings shall be held at the offices of ATRS, 1400 West Third Street, Little Rock, Arkansas 72201.

The Hearing Officer may continue any scheduled matter at his or her discretion for good cause shown by any party or counsel of record. If the Member fails to appear at the hearing, the Member waives his or her right to present evidence and argument to the Hearing Officer, and the Hearing Officer may proceed with the hearing and prepare a Proposed Order to the Board based on the evidence presented.

SECTION 13.06: Filing of Documents

Following the appointment of a Hearing Officer, all correspondence, documents, requests, submissions, or filings of any type relating to an Appeal shall be mailed or hand delivered to:

Arkansas Teacher Retirement System
Legal Department
1400 West Third Street
Little Rock, Arkansas 72201
Fax: (501) 682-6326

Any party submitting or filing a document relating to an Appeal shall simultaneously serve a copy of the filing or document upon the opposing party (or opposing counsel, if applicable). It shall be the responsibility of ATRS to ensure: (a) that copies of all correspondence, documents, requests, submissions, and filings relating to an appeal are provided in a timely manner to the Hearing Officer; and (b) that a complete record of each appellate proceeding before a Hearing Officer and the Board is prepared and maintained in a single, centralized location.

SECTION 13.07: Hearings

Hearings will be conducted according to this Rule and the corresponding procedural provisions of the Arkansas Administrative Procedures Act. See Ark Code Ann. § 25-15-213. The Member shall at all times have the right to counsel, provided that such counsel: (a) is duly

licensed to practice law in the State of Arkansas; or (b) has been granted permission to appear *pro hac vice* by the Hearing Officer. All hearings shall be conducted in an orderly manner. The Hearing Officer shall have the authority to maintain the decorum of the hearing and may clear the hearing room of witnesses not under examination.

The Hearing Officer shall have the authority to administer oaths and affirmations. Each party shall be entitled to examine and cross-examine witnesses, present evidence, make arguments, and generally participate in the conduct of the proceeding. The Hearing Officer may question a witness during any portion of the direct or cross-examination of such witness. All testimony to be considered by the Hearing Officer, except matters officially noticed or entered by stipulation, shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the testimony about to be given before the hearing Office shall be the truth, the whole truth and nothing but the truth.

The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Hearing Officer shall not be bound by the formal rules of evidence, and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board. The Hearing Officer may admit into the record any evidence that in the judgment of the Hearing Officer: (a) has a reasonable degree of probative value and trustworthiness; or (b) is of a type or nature commonly relied upon by reasonably prudent people in the conduct of their affairs. The Hearing Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Objections to evidentiary offers may be made and shall be noted of record. Following the close of evidentiary submissions and witness testimony, the Hearing Officer may in his or her discretion allow summations and closing arguments by the parties.

ATRS shall arrange for a court reporter to attend and record all hearings. Documents received into evidence by the Hearing Officer shall be marked and filed as part of the record. ATRS shall be responsible for payment of the cost of the preparation of the transcript. Upon receipt of the transcript of the hearing, ATRS shall promptly forward a copy of the transcript to the Hearing Officer and the Member (or counsel for the Member, if applicable).

SECTION 13.08: Post-Hearing Briefs

Upon the completion of the hearing, the Hearing Officer may allow the parties to submit post-hearing briefs to be included as part of the record on appeal. The decision whether to allow the submission of post-hearing briefs is committed to the sole discretion of the Hearing Officer. A decision by the Hearing Officer to not allow post-hearing briefs shall have no effect on the validity of any order or decision issued by the Board.

If the Hearing Officer grants the Member or ATRS an opportunity to submit a post-hearing brief, the Hearing Officer shall provide the opposing party an opportunity to submit a response. The Hearing Officer shall have discretion to set reasonable deadlines for the parties to submit post-hearing briefs and responses, provided that the parties shall be allowed a minimum of fourteen (14) days from the date of receipt of the transcript of the hearing before any initial post-hearing brief shall be due for filing.

SECTION 13.09: Proposed Orders

Once the Hearing Officer receives all evidence, arguments, and post-hearing briefs (if any), the record before the Hearing Officer shall be officially closed. Once the record is closed, the Hearing Officer shall, as soon as practical, prepare a Proposed Order to be delivered to the Board of Trustees. The Proposed Order shall include findings of fact based exclusively on the evidence and testimony in the record of the hearing, conclusions of law, and a recommendation to the Board of Trustees. The Hearing Officer shall provide the Proposed Order to the Board at ATRS via facsimile and United States Mail at the address listed in Section 13.06 of this Rule. Upon receipt of the Proposed Order, ATRS shall serve a copy of the Proposed Order upon the Member (and his or her counsel, if applicable) via Certified, First Class, United States Mail, with a copy to the Executive Director.

SECTION 13.10: Written Objections to Proposed Order

Within twenty (21) days of receipt of the Hearing Officer's proposed order, the Member shall have the right to file a written Statement of Objections outlining any objections, exceptions, and/or arguments that the Member desires the Board to consider in its evaluation of the Hearing Officer's Proposed Order. Any Statement of Objections must be filed with ATRS in accordance with Section 13.06 of this Rule. The Member may not introduce additional evidence or testimony in the Statement of Objections. Counsel for ATRS may prepare a written response to any Statement of Objections filed by the Member. A copy of any response filed by counsel for ATRS will be provided to the Member at least ten (10) days prior to the time the Member's appeal is scheduled for consideration by the Board. The Member may waive the ten (10) day limit if it would delay scheduling the matter before the Board.

SECTION 13.11: Board Consideration of Proposed Order

The Board will make a final determination on the Hearing Officer's Proposed Order. The Board's consideration of the Hearing Officer's Proposed Order will be scheduled at the next regular Board meeting after the issuance of the Proposed Order. The Board may call an emergency meeting to consider the Hearing Officer's Proposed Order if the situation warrants. ATRS shall notify the Member or the Member's counsel in writing of the date, time, and location of the Board Meeting.

Failure of the Member to appear at the meeting of the Board without prior notification will result in the Member waiving his or her right to be heard by the Board. The Member may petition the Board for a rehearing if the Board determines that the Member's absence was for good cause.

After consideration by the Board of the Hearing Officer's Proposed Order, the Board has the final authority to accept or reject all or part of the Hearing Officer's Proposed Order. The Board may: (a) accept the Proposed Order; (b) reject the proposed order; or (c) accept the Proposed Order as modified by the Board. If the Board elects to reject the Proposed Order or accept the Proposed Order as modified, the Board may: (a) make its own Findings of Fact and

Conclusions of Law and issue its own Order based upon those findings and conclusions; or (b) remand the matter in whole or in part to the Hearing Officer for reconsideration or for additional findings of fact and/or additional conclusions of law.

Before rendering a decision on the Hearing Officer's Proposed Order, the Board may request that the Member (and his or her attorney, if applicable) make a brief statement to the Board concerning the facts and any arguments the Member wishes to present and respond to any questions from Board. The Chairman of the Board will have final authority to set the amount of time any party may have to make a statement to the Board.

As in all matters before the Board, a quorum of votes are necessary to approve any motion, resolution, or order under consideration.

Following a decision of the Board with respect to the Hearing Officer's Proposed Order, the Board shall cause to be prepared a written Final Order on the Member's appeal. The Board's Final Order shall include separate findings of fact and conclusions of law relied upon by the Board in formulating the Final Order. A copy of the Board's Final Order (including the Board's findings of fact and conclusions of law) will be delivered via Certified, First Class, United States Mail to the Member (and any counsel) by the Executive Director.

SECTION 13.12: Authority to Settle

At any time prior to the issuance by the Board of a Final Order, the Executive Director is authorized to settle any Claim in a manner mutually agreeable to ATRS and the Member. In settling any Claim, the Executive Director shall not exceed the authority previously granted to him or her by the Board. The Executive Director shall report to the Board any settlement that occurs after the Hearing Officer issues a Proposed Order.

SECTION 13.13: Appeals Under the APA

Any Member receiving an adverse ruling from the Board retains certain rights under the Arkansas Administrative Procedures Act. See Ark. Code Ann §§ 25-15-201 to -219. The Member may file a petition for judicial review. See Ark. Code Ann § 25-15-212. Such action must be filed within thirty (30) days after service upon the Member of the Board's Final Order. See *id.*

SECTION 13.14: Communications With the Hearing Officer and Board of Trustees

The Arkansas Administrative Procedures Act prohibits direct or indirect communications by the Members and employees of ATRS with a Hearing Officer or the Board in connection with any issue of fact or law regarding an appeal, except upon notice that provides an opportunity for all parties to participate. Hearing Officers and the Members of the Board will not consider any "ex-parte" or "off-the-record" evidence or statements made to them by the Member or any employee of ATRS in connection with a pending appeal.

This Section does not preclude communications by and between the Hearing Officer, ATRS Staff, and/or the Board concerning minor scheduling and procedural matters necessary to the timely and efficient processing and handling of appeals under these Rules.